



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS - EAST
DIRECTOR, FIELD OPERATIONS - WEST
DIRECTOR, APPEALS PROCESSING SERVICES
DIRECTOR, TECHNICAL GUIDANCE

FROM: Diane S. Ryan /s/ *Diane S. Ryan*
Director, Technical Services

SUBJECT: Interim Guidance for Regular and Small Tax Cases

The purpose of this memorandum is to advise you of a new requirement for Counsel to answer all small tax cases because of an amendment to United States Tax Court Rule of Practice and Procedure 173(b). The Tax Court has amended Rule 173(b) requiring the Internal Revenue Service Commissioner to file answers in all small tax cases ("S" cases, as defined in IRC section 7463), in addition to all regular tax cases.

The new requirement to answer all small tax cases is effective for all "S" docket petitions filed after March 13, 2007. Please ensure that this information is distributed to all affected employees within your organization.

This guidance will be incorporated into IRM 8.20.5.5.4, Establishing New Docketed Receipts, and IRM 8.4.1.7.1, "Dummy File" Procedures, by September 30, 2007. If you have any questions, please contact Program Analyst Beth Thurston at 949 389-5486.

Attachment

cc: IMD Coordinator
Office of Servicewide Policy, Directives, & Electronic Research

Interim Guidance for all Regular and Small Tax Cases

Background:

On January 12, 2007, the Tax Court announced it had adopted an amendment to its Rules of Practice and Procedure, requiring the filing of answers by the Commissioner of Internal Revenue in all small tax cases, effective for small tax cases in which the petitions are filed after March 13, 2007. Therefore, an answer will now be required on every docketed case. The Tax Court expects the new rule requiring answers in small tax cases will improve communication between the parties. Further, the Tax Court believes the filing of answers may promote earlier identification of novel issues resulting from changes in the tax law.

Interim Guidance Procedures:

The current procedure at IRM 8.20.5.5.4.3 states that Small Tax Court cases ("S" cases) do not require an answer by Counsel. The procedures instruct APS to "card" the "S" case on ACDS and then forward the administrative file directly to the Appeals Team Manager for assignment to an Appeals Officer. Effective for any small tax case in which the petition is filed after March 13, 2007, the administrative file must be transmitted to Counsel for answer. "Regular" docketed administrative files, as always, must be promptly transmitted to Counsel for answer.

APS will "card" the docketed case on ACDS CASES by inputting items on the case inventory and return information screen as applicable and in accordance with established procedures. (See IRM 8.20.3 for ACDS fields and acceptable data).

Counsel will continue to forward copies of the petition, Statutory Notice of Deficiency, Designation of Place of Trial, and TLCATS Screen 1 (the petition package) to Appeals. However, effective as of the date of this interim guidance memorandum, Counsel will send ALL petition packages (for regular and "S" cases) to Covington APS to be used when necessary to create a dummy file.

APS will no longer associate the petition with the administrative file. Instead, APS will card the case upon receipt from the information contained in the administrative file and on TLCATS, and then transmit the file to Counsel for answer, no later than 2 days after receipt of the administrative file.

The time within which Counsel must answer a petition is set by the Tax Court at 60 days from the date the petition was served on the IRS. The timeframe to answer small tax case petitions is the same as it is to answer regular tax case petitions. All APS employees must be aware of and take all necessary actions to ensure Counsel receives docketed administrative files with sufficient time remaining to meet the U.S. Tax Court's answer due date. Counsel needs time to prepare its answer. Every effort should be made to card the administrative file and send it to Counsel via a mail delivery system

that ensures it is received in Counsel no later than 20 days prior to the answer due date. The answer due date is clearly identified on the TLCATS Case Screen 1 in the "Answer Due Date" field.

This Tax Court procedural change will create a substantial increase to the flow of administrative files between Appeals and Counsel. It is important that APS employees card and transmit administrative files to Counsel with as much time left to answer the petition as possible.

Docketed Administrative File Received in Appeals

1. Upon receipt of a new docketed regular **OR "S"** case administrative file, the APS PTM will promptly assign the case for carding. The assigned APS employee will take the following steps promptly within two calendar days after receipt of the file in APS (and no later than 40 days after the petition was served, to prevent the preparation and processing of unnecessary "dummy" files):
 - Print TLCATS Case Screen 1 – **Identify and highlight the Answer Due Date, Caption, and Years Petitioned**
 - Card the case on ACDS using the administrative file and TLCATS documents.
 - Verify and act upon non-petitioned years (NPY) and non-petitioning spouses (NPS). APS can rely on TLCATS as to the years and parties identified in the petition. Take immediate and appropriate steps to assess, when necessary.
 - Identify up front, based upon existing case routing guidelines, which Appeals office will consider the docketed case when it is returned by Counsel after answer and which APS office will process the case upon closing. Complete the Appeals/Counsel Routing Cover Sheet (Cover Sheet - copy attached). This document instructs Counsel to send the administrative file to the specified Appeals office address, to the attention of the Lead Appeals Team Manager (ATM), for assignment and consideration. It also clearly identifies the Appeals office and APS address the administrative file must be returned to for closing.
- Caution - If the docketed administrative file has an 872-A alert on the cover do not place an Appeals/Counsel Routing Cover Sheet over it until the APS employee has verified that all periods in the Statutory Notice of Deficiency are addressed in the petition**
- Update ACDS for EACH docketed workunit where the administrative file is sent to Counsel for answer with ACTION = "ANSWER" and a "TODATE" equal to the date the file was sent. This will ensure the "ANSWER" follow-up report can be generated and worked.

- Send the administrative file to the appropriate Counsel office for answer, as identified in TLCATS Screen 1.
- **Close the DIMS record by entering a date in the “Case on ACDS” field = the date the case was created on ACDS (ACDS CREATED).**

Note: *All APS employees must ensure that they card cases timely and consistently close DIMS records. This practice will reduce or eliminate Covington APS creating dummy files for cases in which the original administrative files are already in Appeals.*

2. After answer, Counsel will send the administrative file for consideration **DIRECTLY** to the Appeals office and ATM identified in the Cover Sheet previously placed on top of the administrative file by APS. Counsel will put copies of the petition, Designation of Place of Trial, and answer in the administrative file for the Appeals Officer to work with.
3. Upon receipt of the administrative file sent from Counsel after answer, the ATM and/or ATM secretary will assign the case to an Appeals Officer on ACDS. While on ACDS, they should issue the Uniform Acknowledgement Letter and then give/send the administrative file to the Appeals Officer. Care should be used to ensure that the Uniform Acknowledgement Letter is properly sent to any identified representative and that ACDS reflects the representative's information.
4. When the ATM and/or AO receives the administrative file, they must identify any processing instructions or issues raised by Counsel for actions needed on NPS, NPY or abatement of premature assessments and alert APS immediately.

"Dummy File" Procedures:

1. The current procedure at IRM 8.4.1.7.1 says if a case appears on the Tax Court calendar but it is not on ACDS, the case must be created on ACDS and a **dummy file for consideration** prepared. This is done to ensure the case appears on the TAXCAL listing and receives Appeals consideration. This procedure will remain in effect for any docketed tax case appearing on a docket list dated on or before March 13, 2007. If the case appears on a Tax Court calendar but it is not on ACDS, the APS office that services the Appeals office responsible for the Tax Court calendar is responsible for both creating the case on ACDS and also preparing a dummy file for consideration. The dummy file will be promptly assigned by the ATM.
2. The new procedure requires the creation of a **dummy file for answer** forty (40) days after the date the petition is served on Counsel if the administrative file is not received by Appeals. The case must also be created on ACDS. This new procedure is effective for any docketed tax case appearing on a docket list dated March 14, 2007, or later. Covington APS is responsible for preparing a dummy file for answer that contains all available information regarding the case and carding the case on ACDS. The dummy file will be promptly sent to Counsel **by fax or overnight mail**.

3. The dummy file for answer will consist of copies of all available information obtained from a variety of sources. Most IRS Campus Exam sourced cases are controlled on the Correspondence Examination Automation System (CEAS). In Appeals, Covington APS employees were provided access to CEAS.

The dummy file for answer purposes should contain, at a minimum:

- CEAS information, if available, **or a clearly visible statement that no CEAS is available, if not**
- RTVUE
- Transcript of account
- Appeals/Counsel Routing Cover Sheet

If available, Covington APS will associate the petition package with the dummy file for answer and use all obtainable information to card the case on ACDS. The Covington employee must card the case into the right office by selecting it from the drop down list on the Main Cases menu.

The Covington employee must be sure to promptly and accurately verify and act upon NPS, NPY and potential dismissals on all dummy file cases. However, the Covington employee will not abate premature assessments on dummy file cases unless directed to do so by Counsel.

On ACDS, write "DUMMY FILE" in "Notes" to indicate that this is a "dummy" administrative file.

In addition, on ACDS, enter the following information:

- RECDATE = date dummy file created
- REQAPPL = date petition filed
- ACTION = ANSWER
- TODATE = equal to the date the case was created – also = date dummy file is forwarded to Counsel
- FROMDATE = Blank
- LACTION = DKTLST XXX (Dkt List #)
- LTODATE = equal to the date the case was created – also = date dummy file is forwarded to Counsel

Note: Use of LACTION DKTLST XXX with a valid TODATE and blank FROMDATE indicates that the actual administrative file has not been received.

Caution: If the original administrative file is later received, do not change the ACDS RECDATE field to the new date. Instead, update "Notes" to record the actual received date as follows: "ADMIN FILE RECD MM/DD/YYYY ASSOCIATED W/DUMMY FILE". This will indicate that the case was originally assigned as a dummy

*file but the actual administrative file was later received and associated with the dummy file. When the original administrative file is received, input a FROMDATE in LACTION = to the date the original administrative file is received. **Close the DIMS Record by entering a date in the "Case on ACDS" field = the date the original administrative file was received.***

4. Determine the location of the dummy file so that the administrative file can be associated.
 - Research ACDS to determine if Appeals has possession of the dummy file. If the dummy file is currently assigned to an AO/SO, prepare a Form 3210 and send the original admin file to the AO/SO to associate it with the dummy file. (Notes field = "admin file received, associate with dummy file".)
 - Research CATS to determine if Counsel has possession of the dummy file. If the dummy file is currently in Counsel, prepare a Form 3210 and send the original admin file to Counsel to associate it with the dummy file. If the dummy file location is unclear on CATS, call Counsel to verify the dummy file location. (Notes field = admin file to Counsel to associate with dummy file)
5. If no administrative file is received and Counsel answers the petition using the dummy file documents, then Counsel will include a copy of the petition, answer, Designation of Place of Trial, and any other pertinent information from the legal file, in the dummy file. Counsel will then send the dummy file for consideration **DIRECTLY** to the Appeals office and ATM identified in the Cover Sheet previously placed on top of the dummy file for answer by APS.
6. Upon receipt of the dummy file sent from Counsel after answer, the ATM and/or ATM secretary will assign the case to an Appeals Officer on ACDS. While on ACDS, they should issue the Uniform Acknowledgement Letter and then give/send the administrative file to the Appeals Officer. Care should be used to ensure that the Uniform Acknowledgement Letter is properly sent to any identified representative and that ACDS reflects the representative's information.
7. When the ATM and/or AO receives the dummy file, they must identify any processing instructions or issues raised by Counsel for actions needed on NPS, NPY or abatement of premature assessments and alert APS immediately.
8. The APS campus technical advisor will use the hardcopy docket lists to prepare an excel spreadsheet to indicate the date forty (40) days after the date the petition is served on Counsel for each docket list. This spreadsheet will show the docket list number, the date the petition was served and the 40 day date for each docket list. It will be periodically sent to the Covington APS PTM to use to ensure dummy files for answer are created timely. The responsible Covington APS employee will create the dummy file and fax or mail it to the appropriate Counsel office.

9. **Do not close DIMS until the original admin file is received.**

APPEALS/COUNSEL ROUTING
DO NOT REMOVE

TO: Office of Chief Counsel, _____

ATTN: TL CATS Operator

RE:

DKT#: _____

TP Name: _____

TIN: _____

Tax Years: _____

Please return the administrative file to the Lead ATM for
Assignment and Consideration to the address below:

Appeals Office, _____

ATTN: Lead ATM

Please return the administrative file to APS for **Final Closing** to
the address below:

Appeals Office, _____

ATTN: APS

